UNITED
NATIONS

AT

Administrative Tribunal

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2 August 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 773

Case No. 843: SOOKIA

Against: The Secretary-General of the International Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 28 February 1995, Bashir Ahmad Sookia, a staff member of the International Maritime Organization (hereinafter referred to as IMO), filed an application requesting the Tribunal, inter alia:

"[To order the production of certain documents and]

(b) [To rescind] the wrongful decision to deduct his two monthly salaries; namely that of July and August 1993 amounting to £2,275.68, consequently causing him and his family great financial distress.

...

(a) [To order] his July and August salaries paid to him accordingly;

(b) [That he] be reinstated to his ex post of Mailing Clerk (G-4) together with a compensation of £50,000 for all the suffering (physical, mental, emotional and financial) and damage done to both himself and his family

or

(c) [That he] be appointed to a new post of the G-7 category ...

or

(d) [That he] be given £250,000 ..."

Whereas the Respondent filed his answer on 25 March 1996;

Whereas the Applicant filed written observations on 19 April 1996, on which the Respondent submitted comments on 19 June 1996;

Whereas, on 1 July 1996, the Respondent submitted an additional document, which the Tribunal returned to the Respondent on 16 July 1996, as it could not accept the condition not to make it available to the Applicant;

Whereas, on 16 July 1996, the Tribunal rejected the Applicant's request for the production of the same document, as it was deemed unnecessary;

Whereas the facts in the case are as follows:

The Applicant entered the service of IMO on 3 April 1978, on a fixed-term appointment at the G-2, step I level, as a Messenger in the Administrative Division, Common Services Section. His appointment was extended successively until 1 July 1979, when the Applicant was granted a probationary appointment. On 29 October 1980, his appointment was converted to a regular appointment, and he was promoted to the G-4, step I level, as a Mailing Clerk in the Central Registry of the Administrative Division, Common Services Section.

On 30 December 1988, there was an altercation at an office party in which the Chief, Office of General Services, was allegedly assaulted. A disciplinary inquiry was undertaken but it resulted in no formal action.

On 10 November 1989, the Head of Personnel Section informed the Applicant, "that the Secretary-General has decided to move you from the Central Registry, Office of General Services to the TCD [Technical Co-operation Division] Registry, pending further arrangements". The Applicant worked in the TCD Registry until

30 November 1989. From 1 December 1989 to 8 January 1990, he had no assigned functions and no office. From 8 January 1990 to 22 January 1990, he was assigned to the Maritime Training Section.

In a memorandum dated 18 January 1990, the Applicant requested the Secretary-General to review his situation, stating "it would only be fair to send me back to my old job as Mailing Clerk which I am settled in." In a reply dated 31 January 1990, the Head of Personnel Section informed the Applicant, "I am writing to confirm that the Secretary-General has decided to second you, with immediate effect, to the TCD Registry until further notice." Thereafter, from 1 May 1991 to October 1992, the Applicant served as Mailing Clerk in the TCD Registry.

In a memorandum dated 5 February 1992, to the Secretary-General, the Applicant noted that he had never been informed of the outcome of the Board of Inquiry before which he had appeared relating to the incident on 30 December 1988, but that he had been transferred from his post as a sanction. In a reply dated 18 February 1992, the Secretary-General informed the Applicant" ... The decision to move you from the Central Registry, Office of General Services to the TCD Registry was ... not a disciplinary measure but, as was explained to you at the time, simply a necessary administrative arrangement since it was considered that it would not be appropriate for you and [the Chief, Office of General Services] to continue to work in the same office."

A further exchange of correspondence ensued between the Applicant and the Respondent concerning the Applicant's placement and performance. On 29 March 1993, the Applicant wrote to the Secretary-General, protesting his removal from his post without an alternative suitable post. On 18 June 1993, the Director of Administration informed the Applicant that the Secretary-General had decided to transfer him to the post of Inventory Clerk, at the G-4 level, in the Office of General Services, Administrative Division, with effect from 1 July 1993. In a reply dated 30 June 1993, the Applicant stated: "I will not take the post of Inventory Clerk ..."

In a letter dated 23 July 1993, the Director of Administration advised the Applicant as follows:

> "I have been informed by the Chief of General Services that you have failed to take up the duties to which you were transferred on 1 July 1993 and, accordingly, have been absent from office without authorization since 1 July 1993. Such unauthorized absences are regulated by the provisions of Staff Rule 105.1(d), and I am writing to inform you that action is being taken to reflect the application of this rule.
>
> Your prolonged unauthorized absence has made the work situation in the Office of General Services extremely difficult. Therefore, further unauthorized absence from duty by you would render your services to the Organization unsatisfactory and the Secretary-General will be compelled, by your action, to take disciplinary measures against you."

In a reply dated 29 July 1993, the Applicant stated, inter alia:

> "... I would like to point out that Staff Rule 105.1 (d) does not apply in my case. My only absence from IMO premises is from 19/07/93 to 23/07/93 when I suffered from influenza; a medical certificate was duly sent in. I have never had any unauthorized absence from IMO or failed to take up any duties which I have agreed with IMO to undertake. In my letter dated 30/06/93 (...) I clearly stated that I refused to take the post to which I was being transferred and gave my reasons for refusal therein. I also clearly explained to you verbally what I was expecting from IMO and that I was staying in room 110 while negotiations for a financial settlement with IMO or a post of a G-7 or G-6 category was offered to me."

In a memorandum dated 20 August 1993, the Applicant informed the Director of Administration that he would accept the post of Inventory Clerk, as of 1 September 1993, "as a temporary alternative ..."

On 13 September 1993, the Head, Personnel Section, informed the Applicant that "action has now been taken to effect recovery from your pay and allowances in respect of your unauthorized

absences from duty during July/August 1993. The recovery is to be spread over a period of three months." A Personnel Action form of the same date directed that recovery be made for absence from duty for the periods 1-16 July, 26-29 July and 1-31 August 1993.

On 1 September 1993, the Applicant assumed the post of Inventory Clerk, Office of General Services.

On 3 September 1993, the Applicant requested the Director of Administration to confirm the decision to remove him from the post of Mail Clerk and appoint him to the post of Inventory Clerk. On the same date, he wrote to the Secretary-General, and lodged an appeal with the Joint Appeals Board (JAB). On 14 September 1993, the Applicant wrote to the Head, Personnel Section, requesting review of the decision to recover his July and August salary. He stated "I have been on IMO premises during the months of July and August ..." In a reply dated 17 September 1993, the Head, Personnel Section, confirmed that the deduction was based on the provisions of Staff Rule 105.1(d). On the same date, the Head, Personnel Section, informed the Applicant that the Secretary-General "had decided to maintain his decision to transfer you to the post of Inventory Clerk with effect from 1 July 1993."

On 12 October 1994, the JAB submitted its report to the Secretary-General. The JAB found that:

> "1. [The Applicant's] appeal is against various actions that all appear to have had their origins in a scuffle that is alleged to have taken place between him and another staff member in December 1988. Although a Disciplinary Board considered the case, the results were not disclosed to [the Applicant]. Some months later he was told to move to another post. No action appears to have been taken against the other staff member.
>
> 2. It is well within the Staff Rules as stated by the Administration to transfer [the Applicant] as was done. However, the circumstances under which it was carried out created the impression that it was for reasons other than efficiency of services within the Organization. More prudence should have been shown.

3. Attempts were made during the next few years following that transfer to find a post for [the Applicant] which would be acceptable to him but without success.

4. [The Applicant] makes two claims. Claim (a) is that he be reinstated to his former post or that he be offered a new post as a G-7. It is not in the opinion of the Board that reinstatement would provide a long term solution and it does not see any justification for such a higher grade.

5. [The Applicant] expresses his willingness to accept voluntary redundance as an alternative to the above. He stipulates a figure of £50,000. The Administration has already offered a package totalling around £20,000. In a recent memo [the Applicant] mentions the sum of £250,000 as a condition to accept voluntary redundancy. The Board does not agree with the proposal. The Board feels that the mere fact that any amount whatsoever was mentioned to [the Applicant] negates the points raised in the memo of Administration of 28 June 1994 that only after an 'agreed termination' that a sum of separation could be agreed. The Board notes that the principle of separation is accepted to both Administration and [the Applicant]. Only the amount is disputed.

6. In claim (b) [the Applicant] refers to the non-payment of his salary for July and August 1993. [The Applicant] maintains that he was not absent from the building ([the Applicant] claims he was called by and met Mr. Barnard on 14 July 1993). However, the Board notes that he was absent on sick leave from 19 July to 23 July and, providing the relevant medical evidence can be produced, recommends that payment for this period be made. The Board cannot put forward an opinion as for the rest of the period since it cannot satisfy itself with whether [the Applicant] was present or absent during that period.

7. Under the circumstances the Board strongly believes that [the Applicant] could not continue to be gainfully employed and some form of separation should be negotiated to save him and the Organization further aggravation. In view of the time that has elapsed since this matter began, the Board feels that a figure closer to the £50,000 claimed than the £20,000 originally offered might be appropriate."

On 21 November 1994, the Secretary-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"You will note that the JAB found that the transfer of your post was well within my competence and that the JAB does not support you in your other claims.

Finally, I can confirm that my decision regarding the recovery of your salary, for the months of July and August 1993, stands."

On 28 February 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was improperly removed from his post.

2. The Applicant was falsely accused of hitting another staff member. Although a Disciplinary Board was convened, its decision was never disclosed to the Applicant.

3. The Applicant was improperly charged for unauthorized absence when in fact he was not absent from the IMO premises.

Whereas the Respondent's principal contentions are:

1. The proceedings of the Joint Disciplinary Committee are irrelevant and immaterial to the Applicant's claim.

2. The decision to transfer the Applicant in 1989 is not properly raised before the Tribunal as the Applicant failed to observe the time limits for appeal.

3. The decision to transfer the Applicant to the post of Inventory Clerk in July 1993 is the only matter properly before the Tribunal. This decision was a lawful exercise of authority in the interest of the service and the proper functioning of the Organization.

4. The Applicant was entitled to no salary for periods of unauthorized absence from duty.

The Tribunal, having deliberated from 3 July to 2 August 1996, now pronounces the following judgement:

I. The decision appealed is that of transferring the Applicant from his post of Mailing Clerk in the Central Registry, and in temporarily assigning him to various posts in the TCD Registry, eventually transferring him to the post of Inventory Clerk in the Office of General Services.

The Respondent contends that the transfer of the Applicant to the post of Inventory Clerk, in June 1993, is the only decision properly before the Tribunal. In the view of the Tribunal, however, the employment history of the Applicant provides the backdrop against which the transfer was implemented.

II. The Applicant claims that his initial temporary re-assignment was related to an altercation which allegedly took place with his supervisor in December 1988. He contends that this re-assignment constituted a disciplinary sanction which was imposed unlawfully. The record indicates that the reason for the Applicant's temporary re-assignment was in some way related to the alleged altercation, but the Respondent contends that it was not a disciplinary measure. In a letter, dated 18 February 1992, the Secretary-General characterized the transfer as "a necessary administrative arrangement" that was made to ensure that the parties involved in the matter no longer worked in the same office.

III. It is well established that the Secretary-General may assign and re-assign staff members at his discretion, in the interest of the Organization. As it appears that the Applicant was not demoted, and that there was no loss in salary, the Tribunal accepts the Respondent's contention that the re-assignment of the Applicant was not, in fact, a disciplinary measure. It finds that it was a reasonable exercise of the Respondent's discretion. Consequently, the Tribunal also accepts the Respondent's contention that deliberations relating to the December 1988 incident are not relevant to this proceeding.

IV. The Applicant also claims reimbursement of the amounts deducted by the Respondent for his unauthorized absence from work, in July and August 1993. The Applicant apparently, was in the building, but, intentionally, did not go to the office to which he had been assigned. The Tribunal has examined Rule 105.1(d) and finds that the Respondent's application of this provision governing "absence from duty" is a reasonable interpretation of the rule in the circumstances. The Applicant's mere presence on the premises of the Organization does not preclude his "absence from duty". The Applicant himself acknowledges his absence from the duties to which he had been assigned. The Applicant has the right to appeal decisions of the Respondent with which he is unhappy, but he does not have the right to unilaterally refuse to discharge duties assigned to him in the interest of the Organization. The Respondent's action in deducting his salary was fitting and within the scope of the applicable rules.

V. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

Geneva, 2 August 1996

R. Maria VICIEN-MILBURN
Executive Secretary